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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT ARIZONA
PHOENIX DIVISION

Jason Crews,

Plaintiff,

vs.

Rosewood Realty, LLC,

And

Ernesto DeHaro

Defendants.

Case No.: **CV24-00778-PHX-DLR**

Complaint for Violations of:

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

COMPLAINT

COMPLAINT- 1

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2. The Defendants in this action Rosewood Realty, LLC and Rosewood Realty, LLC orchestrated placing at 9 illegal telemarketing calls using an Automated Telephone Dialing System (“ATDS”) to a number assigned to a cellular service which was included on the national Do-Not-Call List.

Parties

5. Defendant Rosewood Realty, LLC (“Rosewood”), incorporated in Arizona, doing business as Rosewood Realty, LLC, and is in the business of selling real-estate.

Jurisdiction & Venue

8. The Court has specific personal jurisdiction over the Defendants because they have repeatedly placed calls to Arizona residents, including the Plaintiff. Defendants purposely placed calls to Arizona residents.

COMPLAINT- 2

1 **The Telephone Consumer Protection Act**

2 8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the
3 automated calling industry. In so doing, Congress recognized that “[u]nrestricted
4 telemarketing . . . can be an intrusive invasion of privacy[.]”: Telephone Consumer
5 Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

6 9. Under the TCPA, an individuals such as DeHaro may be personally liable for
7 the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the TCPA, which reads,
8 inter alia:

9
10 [T]he act, omission, or failure of any officer, agent, or other person acting for or
11 employed by any common carrier or user, acting within the scope of his
12 employment, Case 2:22-cv-02724-ER Document 1 Filed 07/11/22 Page 2 of 11 3
13 shall in every case be also deemed to be the act, omission, or failure of such carrier
14 or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

15 10. When considering individual liability under the TCPA, other Courts have agreed
16 that an officer or individual involved in the telemarketing at issue may be personally liable
17 under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*, 2013 U.S. Dist. LEXIS
18 159985, *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can
19 be individually liable for violating the TCPA where they had direct, personal participation in
20 or personally authorized the conduct found to have violated the statute.”) (cleaned up) and
21 *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415-16 (D. Md. 2011) (“If an individual
22 acting on behalf of a corporation could avoid individual liability, the TCPA would lose
23 much of its force.”).

24 11. DeHaro personally participated in the complained-of actions by personally
25 directing and authorizing the scripting and selecting of calls to be made, selecting, and
26 orchestrating the calling strategy, including by choosing to use pre-recorded calls.

27 **Factual Allegations**

28 12. To promote their services Defendants relied on prerecorded “robocalls.”

1 13. To promote their services Defendants also relied on the use of ATDS systems.

2 14. Plaintiff had no prior business relationship with Defendants.

3 15. Plaintiff is a "person" as defined by 47 U.S.C. § 153(39).

4 16. Defendant Rosewood Realty, LLC is a "person" as defined by 47 U.S.C. §
5 153(39).

6 17. The phone number (602) 295-XXXX ("Cell Number") belongs to Plaintiff.

7 18. The Cell Number has been on the Do-Not-Call registry since November 7,
8 2006.

9 19. Despite this registration, Defendants placed the calls summarized in the
10 following table with an Automated Telephone Dialing Systems ("ATDS").

Date	Time	Caller ID
3/5/24	5:56 PM	(480)716-0757
3/14/24	4:10 PM	(623)294-4372
3/14/24	4:11 PM	(623)294-4372
3/14/24	4:12 PM	(623)294-4372
3/14/24	4:13 PM	(623)294-4372
3/14/24	4:15 PM	(623)294-4372
3/15/24	2:17 PM	(602)780-3696
3/15/24	3:25 PM	(602)780-3696

17
18 20. The Cell Number is assigned to a cellular phone used exclusively for personal
19 residential purposes.

20 21. Plaintiff did not consent to receive prerecorded or automated messages to his
21 Cell Number.

22 22. Plaintiff did not consent to receive telephone calls via ATDS.

23 23. The Cell Number is not associated with a business.

24
25 Calls to Plaintiff

26 24. On or about March 15, 2024, at 5:56 pm, Plaintiff was interrupted while
27 working by a call presenting caller ID (480)716-0757.

1 25. Plaintiff was greeted by an individual who identified themselves as Rebeca from
2 Rosewood Realty.

3 26. Rebeca asked for "Mr. Irwin".

4 27. Plaintiff is not Mr. Irwin, nor has he ever been identified by that name.

5 28. Rebeca pitched Defendant's services as a real-estate buyer and seller.

6 29. Plaintiff declined their offer of services, and told Rebeca that he would let them
7 know if he was interested.

8 30. Plaintiff did not receive a copy of their internal do not-call-policy ("DNC
9 Policy") from Defendants.

10 31. Despite being on the national DNC list, and expressing that he was not
11 interested in their services, Plaintiff continued to receive at least eight more telephone calls
12 from Defendants.

13 32. On or about March 14, 2024, Plaintiff called Defendant Rosewood to confirm
14 their identity, and obtain contact information to send written correspondence to.

15 33. Plaintiff was greeted by Defendant DeHaro.

16 34. DeHaro attempted to convince Plaintiff to utilizes their services, and once
17 again, Plaintiff declined. DeHaro provided plaintiff with the email address
18 ernesto@rosewoodrealty.net

19 35. On or about March 15, 2024 Plaintiff received a text message from Defendant
20 Ernesto presenting Caller ID (602)780-3696 which state

21 Hello Mr. Irwin, it's Ernesto and I appreciate you reaching back out. If we end up
22 working together communication is very important for us and I do understand you
23 may have a busy schedule and difficult to have a conversation over the phone. Now,
24 for the sake of not wasting both our time I want to let you know I spoke with our
25 underwriting team and they had mentioned that depending on the property
26 conditions, timeline, and access, my company has been paying anywhere between
\$336,000 to \$386,000. All transactions are in as-is conditions, covering closing costs
and fees, and no realtor commissions are involved. What's a good day and time to
talk about the different options in which we could make this happen?

1 36. On or about March 22, 2024, Plaintiff sent an email to Defendant Rosewood
2 requesting any evidence of consent in their possession, to be placed on their internal do-
3 not-call list, and again requested a copy of their DNC Policy to
4 ernesto@rosewoodrealty.net.

5 37. Defendants did not send Plaintiff a copy of their DNC Policy.

6 38. Plaintiff avers and therefor believes Defendants failed to produce their DNC
7 Policy after multiple requests because no such policy exists.

8 **Defendants' Use of an ATDS**

9 39. Rosewood Realty, LLC's called frequently and from various different numbers.

10 40. Rosewood Realty, LLC's representatives used the identical or nearly identical
11 scripts.

12 41. Rosewood Realty, LLC's representatives purposefully attempted to conceal the
13 identity of their company.

14 42. Rosewood Realty, LLC's representatives solicited services did not target Plaintiff
15 individually but rather targeted "Mr. Irwin".

16 43. For these reasons, Plaintiff believes the telemarketers used an ATDS to generate
17 leads for Defendant's debt relief services.

18 44. The calls were conducted using an Automatic Telephone Dialing System
19 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the
20 capacity to store numbers to be called using a random or sequential number generator or to
21 produce numbers to be called using a random or sequential number generator: *Facebook, Inc.*
22 *v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

23 45. The Third Circuit recently clarified that "Congress envisioned a broad
24 understanding of 'equipment'" that constitutes an ATDS. It also clarified that the analysis
25 of whether an ATDS was used in violation of the TCPA centers around "whether the
26 Defendants employ[s] [ATDS] capacities to make automated calls": *Panzarella v. Navient*
27 *Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that Congress intended

1 to “ban all autodialed calls” because Congress “found autodialer technology to be uniquely
2 harmful”: *Id.* at 879 (cleaned up).

3 46. In enacting the ATDS prohibition, the Third Circuit cited favorably to
4 Congressional understanding “that telemarketers could transform ordinary computers into
5 autodialers through minor and inexpensive modifications,” including by “relying on
6 computerized databases containing telephone numbers during their dialing campaigns”: *Id.*
7 at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS prohibition,
8 Congress intended to remedy the problems caused by callers using computer software to
9 dial numbers randomly or sequentially from a list or database: *Id.*

10 47. The system(s) that Defendants used to place the calls to Plaintiff is/are an
11 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the
12 phone, and only then connect Plaintiff to a human being.

13 48. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This
14 supports the inference that Defendants used an ATDS, such as one that “use[s] a random
15 [or sequential] number generator to determine the order in which to pick phone numbers
16 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

17 49. Other courts have held, post-Facebook, that allegations similar to those herein
18 of the absence of a relationship between the parties, and the random nature of the
19 automation device (such as the ability to randomly generate caller ID numbers), are all
20 indicia of use of a random or sequential dialing device. This gives rise to the inference at the
21 pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat’l Republican*
22 *Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at *11 (E.D. Pa. May 26,
23 2021).

24 50. No facts exist here to support the conclusion that Defendants was calling from
25 a curated list of his past customers. In contrast to a company that dials calls en masse to
26 multiple individuals from a list of telephone numbers (as here), a company that calls its
27 existing customers utilizing an imported customer list does not place calls using an ATDS.

1 Such calling uses a database targeting existing customers' information rather than computer-
2 generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at 881–882.

3 51. Plaintiff is ignorant of the exact process by which the system(s) used by
4 Defendants operates other than by drawing the reasonable inference and alleging that the
5 system(s) stores or produces telephone numbers randomly or possibly sequentially based on
6 the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as at least
7 one district court explained, "The newly clarified definition of an ATDS is more relevant to
8 a summary judgment motion than at the pleading stage": *Gross v. GG Homes, Inc.*, No. 3:21-
9 cv-00271-DMS-BGS, 2021 WL 2863623, at *7 (S.D. Cal. July 8, 2021); accord *Miles v.*
10 *Medicredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo. July 14, 2021).

11 **Defendants' Conduct Was Knowing and Willing**

12 52. Defendants intentionally called Plaintiff multiple times in order to advertise
13 their services to Plaintiff

14 53. Defendants knew his actions were in violation of the TCPA and willfully
15 continued his conduct.

16 **The TCPA Prohibits All Automated Calls to Protected Numbers**

17 54. The TCPA makes it unlawful "to make any call (other than a call made for
18 emergency purposes or made with the prior express consent of the called party) using an
19 automated telephone dialing system or an artificial or prerecorded voice ... to any
20 telephone number assigned to a ... paging service, cellular telephone service, specialized
21 mobile radio service, or other radio common carrier service, or any service for which the
22 party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

23 55. Congress singled out these services for special protection because Congress
24 realized their special importance in terms of consumer privacy (as is the case with cellular
25 phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356, (2020) (Gorsuch, J.
26 & Thomas, concurring in part and dissenting in part).

1 56. According to findings by the Federal Communications Commission ("FCC"),
2 which is the agency Congress vested with the authority to issue regulations implementing
3 the TCPA, such messages are prohibited because, as Congress found, automated or
4 prerecorded messages are a greater nuisance and invasion of privacy than live ones, are
5 costly, and are inconvenient.

6 57. The TCPA provides a private cause of action to persons who receive calls in
7 violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

8 58. These causes of action apply to users of any of four protected services (pager,
9 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch system], or
10 another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or any service,
11 including residential, VoIP, and landline services, for which the called party is charged:
12 *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md. 2013).

13 59. "Non-Emergency pre-recorded voice or autodialed calls to the destinations
14 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express consent
15 of the called party."

16 60. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone
17 solicitation to ... [a] residential telephone subscriber who has registered his or her
18 telephone number on the National Do-Not-Call Registry of persons who do not wish to
19 receive telephone solicitations that is maintained by the Federal Government" and defines
20 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of
21 encouraging the purchase or rental of, or investment in, property, goods, or services, which
22 is transmitted to any person...": U.S.C. § 227(f)(15).

23 61. The FCC also recognized that "wireless customers are charged for incoming
24 calls whether they pay in advance or after the minutes are used": In re Rules and
25 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,
26 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

62. In 2013, the FCC required prior express written consent for all autodialed or prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.

Specifically, it ordered:

[A] Consumer's written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received "clear and conspicuous disclosure" of the consequences of providing the requested consent, i.e., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition, the written agreement must be obtained "without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service."

63. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

64. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any telephone call ... using an automatic telephone dialing system or an artificial or prerecorded voice."

65. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency telephone line," "guest room or patient room of a hospital, health care facility, elderly home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. § 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing]to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described... "

66. The National Do-Not-Call Registry allows consumers to register their telephone numbers and thereby indicate their desire to not receive telephone solicitations at those numbers: 47 C.F.R. § 64.1200(c)(2).

67. A listing on the Registry "must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator": *Id.*

68. The TCPA and implementing regulations prohibit the initiation of telephone solicitations to residential telephone subscribers whose numbers are on the Registry and provide a private right of action against any entity making those calls or "on whose behalf" such calls are promoted; 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

69. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity." It goes on to establish specific "minimum standards":

(1) "Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand..."

(2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list."

(3) "If a person or entity making a call for telemarketing purposes ... receives a request ... not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name ... and telephone number on the do-not-call list at the time the request is made ... must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made."

(4) "A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted."

(5) "A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls."

Claims

Count One

70. Plaintiff incorporates the foregoing allegations as fully set forth herein.

71. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute violations of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

1 72. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal
2 privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling
3 him to recover \$500 in civil fines for each violation and an injunction requiring Defendants
4 to stop his illegal calling campaign.

5 73. Plaintiff is also entitled to and does seek injunctive relief prohibiting
6 Defendants and/or his affiliates, agents, and/or other persons or entities acting on
7 Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or sending
8 messages, except for emergency purposes, to any number using an artificial or prerecorded
9 voice in the future.

10 74. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and
11 willful violations of 47 U.S.C. § 227(b)(3)(B)

12 75. Defendants' violations were willful and/or knowing.

13 **Count Two**

14 76. Plaintiff incorporates the foregoing allegations as fully set forth herein.

15 77. Defendants called Plaintiff's private residential telephone number which was
16 registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the
17 calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

18 78. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal
19 privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him
20 to recover \$500 in civil fines for each violation and an injunction requiring Defendants to
21 stop his illegal calling campaign.

22 79. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and
23 willful violations of 47 U.S.C. § 227(c)(3)(F).

24 80. Defendants' violations were willful and/or knowing.

25 **Relief Sought**

26 WHEREFORE, Plaintiff requests the following relief:

1 A. Injunctive relief prohibiting Defendants from calling telephone numbers using
2 an artificial or prerecorded voice and/or ATDS.

3 B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500
4 in damages for each violation or—where such regulations were willfully or
5 knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

6 C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500
7 in damages for each violation or—where such regulations were willfully or
8 knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

9 C. Such other relief as the Court deems just and proper.

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11
12 RESPECTFULLY SUBMITTED on this April 4, 2024.

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15 _____
16 Jason Crews
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